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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1956

No. 466

SECURITIES AND EXCHANGE COMMISSION,
Petitioner,

versus

LOUISIANA PUBLIC SERVICE COMMISSION,
MIDDLE SOUTH UTILITIES, INC.,
AND LOUISIANA POWER & LIGHT COMPANY.

On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit.

**BRIEF OF LOUISIANA PUBLIC SERVICE
COMMISSION, RESPONDENT, IN OPPOSITION.**

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The Louisiana Public Service Commission, (the Louisiana Commission) an official agency of the State of Louisiana,¹ domiciled in Baton Rouge, opposes the granting of the writ of certiorari to review the judgment of the U. S. Court of Appeals for the Fifth Circuit, entered herein on June 30, 1956.

¹ Louisiana Constitution, 1921, Article VI, Section 4; Louisiana Revised Statutes 1950, Title 45, Section 1161, et seq.

OPINIONS BELOW.

The opinion of the Court of Appeals (App. A of Petition, pp. 25-35) is officially reported at 235 F. (2d) 167. The Securities and Exchange Commission (the S. E. C.) findings and opinions are unreported; that of September 13, 1955 is found at R. 110, and of March 20, 1953 at R. 74.

JURISDICTION.

The jurisdictional requisites set forth in the petition.

QUESTIONS PRESENTED.

1. Whether the action of the S. E. C. in its order of September 19, 1955, declining to revoke or modify its order of March 20, 1953, is reviewable by the Court of Appeals on a showing that conditions on March 20, 1953, or subsequent thereto, upon which the order was predicated do not exist, where the provisions of Section 11 (b) of the Public Utility Holding Company Act of 1935 (the Act) specifically authorize the S. E. C. to "revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist", and also provide that "Any order made under this subsection shall be subject to judicial review . . ."

2. Whether the "loss of substantial economies" referred to in Section 11 (b) (1) (A) of the Act, that would result by the forced divestiture from the single integrated public utility system of a registered holding company of an additional system, applies solely to the additional system or to both the principal and additional systems; if to the additional system only, must the loss

of substantial economies cause such serious economic impairment to it as to render it incapable of independent economic operation.

3. Whether a State Commission, charged with the duty of regulating public utilities and of fixing reasonable and just rates for the services thereof, shall be allowed to present evidence against the forced separation by the S. E. C. of the electric and gas systems of a large public utility serving 65,000 gas customers, and 187,000 electric customers, all of whose physical properties, both electric and gas, being located in that State, where there will be a loss of economies to the electric and gas customers of \$957,193 annually, the separation being opposed not only by the Louisiana Public Service Commission as against the public interest, but also by the Governor of the State, the officials of 28 of the 30 towns and communities served, and of 14 of the 15 parishes (counties) served.²

STATEMENT.

Pursuant to its notice dated January 29, 1953, the S. E. C. held a hearing on February 19 and 20, 1953 and thereafter, in its order of March 20, 1953, issued under the provisions of Section 11 (b) (1) of the Act, directed *inter alia*, that Middle South Utilities, Inc., (Middle South) a registered holding company, and its subsidiary, Louisiana Power & Light Company (Louisiana Power) dispose of the non-electric properties of Louisiana Power consisting primarily of gas properties. The S. E. C. found that Louisiana Power could not retain its gas properties with its electric utility system because divestment of the

² The officials of the two towns and one parish who originally did not concur with the Commission's position, have now withdrawn from further disagreement.

gas properties would not cause such a "loss of substantial economies" as to satisfy what it found to be the requirements of the clause (A) proviso of Section 11 (b) (1).

On June 16, 1953, the Louisiana Commission issued its general order prohibiting public utility companies under its jurisdiction from disposing of utility properties subject to its jurisdiction without its consent. (See Exhibit K attached to Offer of Proof, Document No. 91).

On November 10, 1954, Louisiana Power and the Louisiana Gas Service Corporation filed a joint application-declaration with the S. E. C., proposing that the newly incorporated Louisiana Gas Service Corporation acquire all the non-electric properties of Louisiana Power. A similar application was filed at the same time by Louisiana Power with the Louisiana Commission. Thereupon, on December 22, 1954, the Louisiana Public Service Commission telegraphed the Secretary of the S. E. C. requesting that a public hearing be ordered on Louisiana Power's said joint application-declaration and that the original case, on which the order of March 20, 1953, was predicated, be reopened and set for further hearing at the same time for the purpose of receiving additional evidence (R. 51, 52). On December 27, 1954, Louisiana Public Service Commission filed its petition with the S. E. C. requesting that it be afforded the opportunity of presenting further evidence on these matters (R. 53, 55). The Louisiana Commission also filed a supplemental petition on January 3, 1955 (R. 57, 58). Attached to the supplemental petition was a letter from the President of Louisiana Power advising the S. E. C. that it had no objection to the reopening of the proceedings (R. 60).

The S. E. C. determined that before ruling on the petition to reopen the record it should have a more complete understanding of the basis for the petition in the form of an Offer of Proof with supporting brief (R. 61). Accordingly, the S. E. C. advised the Secretary of the Louisiana Commission by letter of January 21, 1955, that it would entertain such an Offer of Proof and brief, suggesting that the Offer should set out in reasonable detail the facts which the Louisiana Commission would seek to prove to establish changed circumstances supporting a modification of the order and any other facts which "you deem relevant and will seek to establish. In the brief you can submit your arguments for reopening the record" (R. 62, 63). On May 16, 1955, the S. E. C. issued its "Notice of Filing of Petition to Open Record in Previous Proceeding and to Hold Public Hearings in Respect of Opened Record and on Pending Applications and Declarations". The notice is somewhat detailed; it states the situation with respect to the background of the case, to the position of the Louisiana Commission, contains a description of the material filed by the Louisiana Commission in support of its position, and invites Middle South and Louisiana Power and any other interested person to file statements in support of or in opposition to the position of the Louisiana Commission; likewise, a date for oral argument was fixed (R. 64-73).

The Louisiana Commission's Offer of Proof was the result of an extensive study commenced in January, 1955, by its experienced staff of public utility investigators requiring more than three months to complete. It presented a complete separation study to show what the expense of operating the gas properties as a sep-